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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 20, 1998

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Hand Delivery

Magalie Román Salas, Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: MM Docket No. 98-93
Streamlining of Radio Technical Rules in
Parts 73 and 74 of the Commission's Rules

Dear Ms. Salas:

On behalf of our client, Radio Property Ventures, licensee of four AM broadcast stations in Arizona, Missouri, and Colorado, transmitted herewith for filing are an original and nine (9) copies of its "Comments of Radio Property Ventures" in response to Paragraphs 45-52 of the Notice of Proposed Rule Making and Order in the above-referenced Docket.

Please direct any communications or inquiries concerning this matter to the undersigned.

Very truly yours,


Jerold L. Jacobs

Enc.

cc: Peter Doyle, Assistant Chief,
Dale Bickel, Sup'y Engineer (Both FCC – By Hand – w/enc.)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
1998 Biennial Regulatory Review) MM Docket No. 98-93
Streamlining of Radio Technical Rules in)
Parts 73 and 74 of the Commission's Rules)

TO: The Commission

COMMENTS OF RADIO PROPERTY VENTURES

RADIO PROPERTY VENTURES ("RPV"), licensee of AM Stations KXEG, Tolleson, Arizona, KXEN, Festus-St. Louis, Missouri, and KQXI and KAYK, both Arvada, Colorado, by its attorneys, pursuant to §1.415 of the Commission's Rules, hereby submits Comments in response to Section III(E) ("Streamlined Application Processing Changes") of the Notice of Proposed Rule Making and Order ("NPRM") herein, FCC 98-117, released June 15, 1998, and urges that the streamlining proposals make in that Section be adopted, with certain modifications. In support whereof, the following is shown:

1. As a licensee of four AM stations, RPV applauds the Commission's proposals in Section III(E), Paragraphs 45-52, of the NPRM to extend the Commission's first come/first served processing procedures to AM, NCE FM, and FM translator minor change applications, to expand the definition of "minor change" for the AM, NCE FM, and FM translator services to conform to the commercial FM minor change definition, and to replace the current two-step application process for coordinate corrections with a single-step application procedure.

2. As to first come/first served processing (§§46-47), RPV agrees with the Commission that unlimited exposure to conflicting applications and the concomitant expense and delay under the current policy are both inequitable and inconsistent with the Commission's

treatment of minor changes for FM commercial stations. Cut-off protection will indeed serve the public interest by encouraging potential applicants to file for enhanced facilities while minimizing the resources expended by the Commission and applicants in resolving conflicts between minor change applications. There is simply no public interest basis for treating AM, NCE FM, and FM translator minor change applications differently from commercial FM applications where cut-off protection is concerned.

3. RPV also fully supports the proposal (§§48-50) to expand the definition of “minor change” for the AM, NCE FM, and FM translator services to conform to the commercial FM “minor change” definition. As with the proposal to adopt first come/first served processing, there is no public interest justification for defining “minor changes” for the AM, NCE FM, and FM translator services more narrowly than for the commercial FM service.

4. Moreover, with the Commission’s adoption of broadcast auction rules for mutually exclusive major change applications in the First Report and Order in MM Docket No. 97-234, FCC 98-194, released August 18, 1998, there is an additional important public interest ground for exempting certain construction permit applications by existing licensees or permittees from being treated as “major change” applications. By definition, mutually exclusive major modification applications involve at least one existing licensee or permittee that is attempting to upgrade or otherwise improve (or save) its facilities. Auctions will certainly discourage existing licensees or permittees from making such filings and maximizing their use of the spectrum, which is surely contrary to the public interest. Since the Commission has already decided that it will hold auctions for mutually exclusive major change applications, RPV submits that the next best way to encourage upgrades or facility improvements is to narrow the definition of “major changes” so that routine upgrades or facility improvements will qualify as minor changes.

5. However, RPV submits that the proposal, as stated in Paragraph 50 of the NPRM, *does not go far enough*, because, under it, all “applications to change community of license” would continue to be classified as “major” changes. Continuing to treat all changes in community of license by AM, NCE FM, and FM translator stations as “major changes” is inequitable and does not correspond to the treatment of commercial FM stations. The reason is simply that commercial FM stations can change their communities of license via reallocation FM channel rulemaking proceedings, in accordance with Modification of FM and TV Authorizations, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990), without their proposals being treated as major changes subject to auction. RPV submits that the only way to provide symmetry for AM, NCE FM, and FM translator stations on this issue is to further expand the definition of “minor change” to state that, as in §1.420(i) of the Rules for commercial FM and TV stations, a change in community of license by an AM, NCE FM, or FM translator station will be treated as a minor change if the station’s facilities in the new community will be mutually exclusive with the station’s present facilities.

6. In this connection, RPV urges that the decision to treat a change in community of license by an NCE FM station as a minor change should include a requirement for a specific level of continued service to the station’s current licensed 60dBu service area. A minimum requirement of service to 50% of the existing service area is suggested, but in no case should existing 60 dBu service to the current community of license be deleted. Treating changes in community of license by FM translator stations as minor changes is fully supported without concern for 60 dBu replication.

7. Finally, turning to the proposal (§§51-52) to permit a single license application procedure to correct site coordinate differences up to 3 seconds in latitude and longitude, RPV


concur but requests a clarification. There are a number of stations which are allocated down to the least possible site separation. In those cases, even a one-second change in coordinates could create a §73.207 shortspacing. Where such a shortspacing is created, RPV assumes that the Commission will waive §73.207 and grandfather the shortspacing since it represents only a correction of site data to conform with reality, rather than an actual change in technical facilities. See Letter to Leonard S. Joyce, Esq., DA 98-1853 (Asst. Chief, Audio Services Div. Sept. 16, 1998) (§73.207 waived where the difference between authorized and corrected spacing is de minimis and the application raises no environmental, international or other issues). Such a waiver and grandfathering should be clearly indicated in the comment section of the Commission's FM database to avoid confusion.

WHEREFORE, in light of the foregoing, RPV respectfully requests that the Commission should amend Parts 73 and 74 of the Rules in the manner discussed above.

Respectfully submitted,

RADIO PROPERTY VENTURES

By:


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Dated: October 20, 1998